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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
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EXAMINER

ONI, OLUBUSOLA

ART UNIT PAPER NUMBER

2168

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/668,907	<b>Applicant(s)</b> OLARIG ET AL.	
	<b>Examiner</b> OLUBUSOLA ONI	<b>Art Unit</b> 2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,12-14,17,22-26,36-38,42,47,49,56 and 61-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,12-14, 17, 22-26,36-38,42,47,49,56,61-71 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/23/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This action is responsive to communication: Application, filed on 09/23/2003.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 61-67 are rejected under 35 U.S.C 101 because the claimed invention directed to non-statutory subject matter.

In claim 61, a "System for Updating" is recited; however, it does not appear that the system is limited to tangible embodiments. It appears that such could be a representative of the software that causes back-up to occur, it is therefore a computer software per se and not limited to tangible, patent-eligible subject matter.

In claim 64 "means" is recited; however, each means can be performed using software, therefore it is a computer software per se, and as such it is not limited to tangible, patent-eligible subject matter.

### **Double Patenting**

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 2 of patent # 6,633,978 contains every element of claim 1 of the instant application and as such anticipates claims 1 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of

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obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BAC (DECIDED: MAY 30, 2001).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 22-26, 36-37,42,47, 49, 56, 61-63 and 68-70 are rejected under 35 U.S.C. 102(e) as being anticipated by Crawford (U.S 6,411,943).

For claim 22, Crawford teaches "a computer having a plurality of installed resources" (Col 2, lines 39-42, Col. 4, lines 55-69); and "a configuration manager coupled to the computer' said configuration manager is adapted to store a configuration database including resource information associated with the computer" (Col. 18, lines 53-59, Col. 19, lines 40-67, Col. 20, lines 1-4), " adapted to receive a restoration request

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from the computer including a computer identifier associated with the computer” (Col. 9, lines 6-10, C. 10, lines 32-38), “ a adapted to authenticate the restoration request, adapted to access the configuration database to identify a restorable resource based on the computer identifier associated with the computer”( Col. 9, lines 6-10, Col. 18, lines 15-58), and “ adapted to provide the restorable resource to the computer”(Col. 2, lines 39-42, Col. 4, lines 55-69).

For claim 23, this claim is rejected on grounds corresponding to the argument give above for rejected claim 22 above. Crawford teaches “wherein the computer is adapted to install the restorable resource”(Col. 4, lines 34-37, Col. 4, lines 55-67).

For claim 24, this claim is rejected on grounds corresponding to the argument give above for rejected claim 22 above. Crawford teaches “further comprising a server coupled to the computer and adapted to receive the restorable resource and install the restorable resource on the computer” (Col. 4, lines 34-37, Col. 4, lines 55-67).

For claim 25, this claim is rejected on grounds corresponding to the argument give above for rejected claim 22 above. Crawford teaches “further comprising a server coupled to the computer, the configuration manager being housed on the server” (Col. 4, lines 34-37, Col. 4, lines 55-67, Col. 18, lines 53-59, Col. 19, lines 40-67, Col. 20, lines 1-4).

For claim 26, this claim is rejected on grounds corresponding to the argument give above for rejected claim 22 above. Crawford teaches "wherein the configuration manager is adapted to provide the restorable resource to the computer by providing an address for the restorable address" (Col. 4, lines 1-16, Col. 15, lines 21-30).

For claim 36, this claim is rejected on grounds corresponding to the argument give above for rejected claim 22 above. Crawford teaches "wherein the computer is adapted to register a plurality of installed resources associated with the computer in the configuration database" (Col. 18, lines 50-59, Col. 19, lines 40-67, Col. 20, lines 1-4).

For claim 37, this claim is rejected on grounds corresponding to the argument give above for rejected claim 36 above. Crawford teaches "wherein the computer is adapted to register the plurality of installed resources by providing a resource name and a computer identifier associated with the computer" (Col. 19, lines 40-67, Col. 20, lines 1-4).

For claim 42, this claim is rejected on grounds corresponding to the argument give above for rejected claim 36 above. Crawford teaches "wherein the configuration database includes resource identifying information, resource version information, and resource location information" (Col. 18, lines 50-59, Col. 19, lines 40-67, Col. 20, lines 1-67).

For claim 47, Crawford teaches “a configuration database including resource information” (Col. 14, lines 60-67, Col 15, lines 1-4, Col. 18, lines 15-58); “program instructions, that when executed by a processing device perform a method for restoring a resource on a computer”(col. 4, lines 55-67), the method comprising: “receiving a restoration request including a computer identifier associated with the computer”(Col. 9, lines 6-10, Col. 10, lines 32-38); “accessing the configuration database based on the computer identifier to identify a restorable resource associated with the computer” (Col. 9, lines 6-10, Col. 18, lines 15-58); “identify an available upgrade for the restorable resource” (Col. 10, lines 26-31).

For claim 49, this claim is rejected on grounds corresponding to the argument give above for rejected claim 47 above. Crawford teaches “wherein providing the restorable resource or the upgrade of the restorable resource (Col. 10, lines 26-31) to the computer in the method includes providing an address for the restorable address”(Col.4, lines 1-16, Col. 15, lines 21-30).

For claim 56, this claim is rejected on grounds corresponding to the argument give above for rejected claim 47 above. Crawford teaches “wherein the configuration database includes resource identifying information, resource version information, and resource location information” (Col. 18, lines 50-59, Col. 19, lines 40-67, Col. 20, lines 1-67).



For claim 61, Crawford teaches “a system for updating a computer system having a plurality of installed resources, comprising a configuration manager that is adapted to store a configuration database including resource information associated with the computer” (Col. 14, lines 60-67, Col 15, lines 1-4, Col. 18, lines 15-58) “adapted to receive a restoration request from the computer including a computer identifier associated with the computer” (Col. 9, lines 6-10, Col. 10, lines 32-38), “adapted to access the configuration database to identify a restorable resource based on the computer identifier associated with the computer,” (Col. 9, lines 6-10, Col. 18, lines 15-58); “ adapted to provide the restorable resource to the computer” (Col. 2, lines 39-42, Col. 4, lines 55-69) and “adapted to bill the user”(Col. 15, lines 39-65, Col. 9, lines 6-15).

For claim 62, this claim is rejected on grounds corresponding to the argument give above for rejected claim 61 above. Crawford teaches “wherein the configuration manager is adapted to provide an address for the restorable address to the computer”(Col. 4, lines 1-16, Col. 15, lines 21-30).

For claim 63, this claim is rejected on grounds corresponding to the argument give above for rejected claim 61 above. Crawford teaches, “wherein the configuration database includes resource identifying information, resource version information, and resource location information” (Col. 18, lines 50-59, Col. 19, lines 40-67, Col. 20, lines 1-67).

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For claim 68, this claim is rejected on grounds corresponding to the argument give above for rejected claim 47 above. Crawford teaches "wherein the method further comprises offering the restorable resource and the upgrade of the restorable resource" (Col. 10, lines 26-31).

For claim 69, this claim is rejected on grounds corresponding to the argument give above for rejected claim 68 above. Crawford teaches "wherein the method further comprises enabling a user to select either the restorable resource or the upgrade of the restorable resource" (Col. 51, lines 43-47)

For claim 70, this claim is rejected on grounds corresponding to the argument give above for rejected claim 69 above. Crawford teaches "wherein the method further comprises providing either the restorable resource or the upgrade of the restorable resource based on the user's selection" (Col.51, lines 42-64)

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 5, 12-14, 17, 38, 64, 67 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford (U.S. 6,411,943) in view of Roger Needham et al. (December 1978) hereinafter Roger.

For claim 1, Crawford teaches "providing a configuration database including resource information"(Col. 14, lines 60-67, Col. 15, lines 1-4, Col. 18, lines 15-58); "receiving a restoration request including a computer identifier associated with the computer"(Col. 9, lines 6-10, Col. 10, lines 32-38); "accessing the configuration database based on the computer identifier to identify a restorable resource associated with the computer"(Col. 9, lines 6-10, Col. 18, lines 15-58);

Crawford does not teach "encrypting the restorable resource to form an encrypted restorable resource"

However Roger teaches "encrypting the restorable resource to form an encrypted restorable resource" (See [pg 995- 996]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Crawford with the teachings of Roger, using the method of

encryption, which secures communication in physically vulnerable networks depending upon the encryption of materials passing between machines. Encryption not only ensures the privacy of the information but it also ensures the integrity of a message.

For claim 3, this claim is rejected on grounds corresponding to the argument give above for rejected claim 1 above. Crawford teaches "wherein providing further comprising providing the encrypted restorable resource to the computer" (See [pg 993-996]).

For claim 5, this claim is rejected on grounds corresponding to the argument give above for rejected claim 1 above. Roger teaches "wherein providing the restorable encrypted restorable resource to the computer" (See [pg 995- 998]) Roger does not explicitly teach "providing an address for the restorable address" However Crawford's teachings include "providing an address for the restorable address" (Col. 4, lines 1-16, Col. 4, lines 55-67, Col. 15, lines 21-30, Col. 18, lines 15-47).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Roger with Crawford, thereby sending restorable resource in the form of an address, would make receiving and access much easier and also ensures its integrity.

For claim 12, this claim is rejected on grounds corresponding to the argument give above for rejected claim 1 above. Crawford teaches "further comprising registering a

plurality of installed resources associated with the computer in the configuration database" (Col. 18, lines 50-59, Col. 19, lines 40-67, Col. 20, lines 1-4).

For claim 13, this claim is rejected on grounds corresponding to the argument give above for rejected claim 12 above. Crawford teaches "wherein registering the plurality of installed resources includes providing a resource name and a computer identifier associated with the computer" (Col. 19, lines 40-67, Col. 20, lines 1-4).

For claim 14, this claim is rejected on grounds corresponding to the argument give above for rejected claim 13 above. Crawford does not explicitly teach "wherein registering the plurality of installed resources includes providing the resource name and computer identifier in an encrypted file".

However, Roger teaches "wherein registering the plurality of installed resources includes providing the resource name and computer identifier in an encrypted file" (See [pg 993-996]).

For claim 17, this claim is rejected on grounds corresponding to the argument give above for rejected claim 1 above. Crawford teaches "wherein providing the configuration database includes providing a configuration database having resource identifying information, resource version information, and resource location information" (Col. 18, lines 50-59, Col. 19, lines 40-67, Col. 20, lines 1-67).

For claim 38, this claim is rejected on grounds corresponding to the argument give above for rejected claim 37 above. Crawford does not explicitly teach "wherein registering the plurality of installed resources includes providing the resource name and computer identifier in an encrypted file".

However, Roger teaches "wherein registering the plurality of installed resources includes providing the resource name and computer identifier in an encrypted file" (See [pg 993-996]).

For claim 64, Crawford teaches "a computer system for restoring resources on a computer, comprising: "means for storing resource information" (Col. 14, lines 60-67, Col.15, lines 1-4, Col. 18, lines 15-58); "means for receiving a restoration request including a computer identifier associated with the computer"(Col.9, lines 6-10, Col.10, 32-38); "means for accessing the resource information based on the computer identifier to identify a restorable resources associated with the computer"(Col. 9, lines 6-10, Col. 18, lines 15-58);

Crawford does not explicitly teach "means for encrypting the restorable resource to form an encrypted restorable resource".

However, Roger teaches "means for encrypting the restorable resource to form an encrypted restorable resource"(See [pg 993-996]).

For claim 65, this claim is rejected on grounds corresponding to the argument give above for rejected claim 64 above. Crawford teaches “ means for authenticating said restoration request” (Col. 4, lines 17-30, Col. 9, lines 6-10, Col. 10, lines 32-38)

For claim 66, this claim is rejected on grounds corresponding to the argument give above for rejected claim 64 above. Crawford teaches “means for billing a user based on said restoration request”(Col. 15, lines 39-65, Col. 9, lines 6-15).

For claim 67, this claim is rejected on grounds corresponding to the argument give above for rejected claim 64 above. Crawford does not explicitly teach “means for providing the encrypted restorable resource to the computer”  
However, Crawford teaches “means for providing the encrypted restorable resource to the computer” (See [pg 995- 996]).

For claim 71, this claim is rejected on grounds corresponding to the argument give above for rejected claim 3 above. Crawford teaches “ wherein proving the encrypted restorable resource to the computer comprises providing the restorable resource to a server connected to the computer” (See [pg 995- 996]).

**CONCLUSION**

8. The following prior art cited on the PTO-892 form, not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLUBUSOLA ONI whose telephone number is 571-272-2738. The examiner can normally be reached on 7.30-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TIM VO can be reached on 571-272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**KHANH B. PHAM**  
**PRIMARY EXAMINER**



OLUBUSOLA ONI

Examiner

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